EXHIBIT 3

UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF WYOMING

CASE NO.: 2:23-CV-00118-NDF

STEPHANIE WADSWORTH, INDIVIDUALLY AND AS PARENT AND LEGAL GUARDIAN OF W.W., K.W., G.W., AND L.W., MINOR CHILDREN, AND MATTHEW WADSWORTH,

Plaintiffs

V.

WALMART, INC. AND JETSON ELECTRIC BIKES, LLC,

Defendants

DEPONENT: GREGORY E. GORBETT, PH.D.

DATE: OCTOBER 24, 2024

REPORTER: OLIVIA M. DOSKER

it did not actually transition to flaming.

Q. Fire Test Number 2 did, correct?

A. Yes.

Q. Who was present when you performed the Fire Tests Number 1 and Number 2?

A. So I had an intern this summer, and he was present. And William Hicks, a colleague of mine, was also present.

Q. What's the intern's name?

A. Cody Radzik.

Q. I saw with these fire tests that there was a -- there was at least some assistance -- unless that was William Hicks, but there was some assistance there from the fire department?

A. No.

Q. Okay. Who was the individual who was going into the shed for ignition?

A. Oh, that's a good question. I think that's me in turnout gear.

Q. Okay. All right. Describe how -- describe the process of performing the fire test.

A. So we started with obtaining an exemplar shed, the same make and model as that -- that was reported at the Wadsworth house on the exterior of the structure. We reviewed the transcripts of Stephanie and Matthew

Wadsworth. Through their depositions, they provided descriptions of what contents were in there. And so -- so did the kids. So in reviewing those, the testimony, we tried to fill the shed similar to what they reported was in the shed.

Q. Were the contents of the shed important variables for your test?

A. Not really.

Q. Would the contents and the makeup or materials of those contents influence the tests in any fashion?

A. Not really. Not significantly. We were focused on -- you -- the combustibility and how this shed burned. So really all we needed to do was get something to allow enough heat transfer to ignite the shed. And we tried to, as similar as possible, match the description that was -- of the contents that were in there.

Q. What is your understanding, if you recall, of what actually was inside of the shed on the night of incident?

A. So in reviewing their transcripts, they indicate that there's -- there were two chairs, a nightstand end table, a heater, a comforter or a quilt. And then you know, there were some other miscellaneous stuff, but we were focused more on the fuel side of

things.

Q. Okay. Do you recall reviewing the materials or the material of that blanket or quilt?

A. I didn't understand your question.

Q. Let me rephrase it. Do you recall seeing in Stephanie -- Stephanie's deposition where she described the material of the quilt?

A. Vaguely. If I remember, she described it as a quilt, possibly. If I remember right. Like denim material of some sort.

Q. Did you endeavor to find a denim quilt or blanket for the purposes of your fire tests?

A. So we did look for a similar-described quilt, but that was more difficult than you think, to find something like that. So we found as close as we could and purchased it, you know, locally and added that into the -- into the fuel load.

Q. Okay. But what kind of quilt did you purchase and add to the shed?

A. It was like a comforter-type material, essentially with a very similar type denim-esq material to as closely resemble what she had described.

Q. Was it cotton?

A. No. No. It would have been synthetic.

Q. Okay. Did you -- as part of your fire tests,

did you analyze the effect, if any, or the impact, if any, of the blanket material in contributing to the fire?

A. No. There would not have been any significant issue from that.

Q. How did you start the fire or ignite it?

A. We just used a torch to ignite the chair.

Q. Okay. Why did you decide to torch the chair?

A. We used a torch as just a flaming ignition source to the chair. It was not our intent of that test to replicate or duplicate the scenario. The intent of this test was to see the ignitability, combustibility, and ultimately the heat release rate of the shed. And what kind of fire would exist from that and what impact that would have on the height of the window in relationship to the smoker shed and -- and, you know, various other things. But it was focused more on, how does the shed burn? So the interior contents, you know, as long as they were similar, it doesn't really add to the -- to what we were looking for or looking to at in this case.

Q. And what did you consider for purposes of determining whether the contents were similar?

A. We read their testimony and as best -- based on their, you know, generalized descriptions of what

were present, we -- we matched as closely as possible.

Q. So you were really focused on determining the combustibility of the shed, not necessarily the -- any type of influence that the contents of the shed may cause or affect?

A. That -- that's correct. We -- we know from looking at the photos that the contents in the shed completely -- were completely, essentially, consumed. So going off of the testimony description by the only folks that actually had been in the shed, we tried to resemble that as closely as possible. But at the end of the day, we know they were combustible except for the metal chair. So they would just add a little bit to the ultimate heat release rate of this fuel.

Q. Did you make any determinations in this case as to the cause?

A. No, I did not. That was not my role.

Q. You certainly discussed within your report, as part of your hypothesis, the potential cause of this fire, correct?

A. I don't believe I did.

Q. You discussed a smoldering from a cigarette?

A. I -- I do talk about the timeframe related to a smoldering cigarette as it relates to the overall heat release rate curve associated with the smoker shed.

Q. Okay. Did you factor in as part of your fire tests of -- the effect and impact of the weather on the heat release rate?

A. Yeah. I mean, you always consider the weather as part of, you know, fire aspects. So yes. We considered it.

Q. Okay. Did you detail in any of your reports, notes, or materials the effect or impact of the weather on the date of the fire test upon the heat release rate?

A. Oh, that -- weather wouldn't have an -- an overall effect on the heat release rate curve. So no. I did not detail that in my report.

Q. Did you consider the effect and impact of any of the wind patterns on the flame height?

A. Yes.

Q. Okay. Did you consider that with regards to the date of incident, the fire on the incident -- the date of incident?

A. Yes.

Q. Okay. Did you compare the fire test wind patterns to the date of incident?

A. Yes.

Q. Okay. Did that influence in any way your opinions gathered from the fire test performed?

A. Yes.

Q. In what way?
A. We had significant wind the day we did our fire test, blowing the wind -- or blowing the flames, as you're looking at the shed, to the left, and it was still able to reach above the top of the window with significant heat and temperatures to create a condition that would have failed the window. So regardless of what the wind and temperatures and conditions were the night of the fire, we had pretty significant weather when we did our test that were as adverse to -- to simulating the weather that would have been that night, and we still had enough energy to create a condition to fail the window. So at the end of the day, this fuel is more than capable of failing the window.
Q. Okay. Did temperature factor into your analysis as to -- in comparison to the night of incident and what effect it would have had on the failure of the window?
A. Of course. It's something we always consider.
Q. Okay. What was the temperature on the date of your fire tests?
A. I don't remember exactly, but I can -- I can look it up for you because that's historical weather. You know, we can -- we can always look that up, but the -- it's probably on the order of 50, 60 degrees. It was

a relatively pleasant, you know -- temperature-wise, versus the night of the fire was -11 degrees. So what that tells me is that it is definitely going to fail the window from that fuel, because it's more of an issue when you have that big of a temperature difference.

Q. Whether the fire started on the inside of that Bedroom number 4 or at the shed outside, given the temperature difference from -11 to the inside of the home, that window was going to fail in either scenario.

Do you agree?

A. I agree that had a fire originated on the outside or the inside, the window in that Bedroom number 4 would have failed eventually. Yes.

Q. Okay. How long did it take for the shed during your fire test to completely burn to the ground?

A. I can look up -- because we have a -- we have a curve. But it's -- I think from ignition to when we actually put the fire out would have been on the order of 15 minutes.

Q. Okay. Did you do any similar fire tests where you tested the window failure?

A. No. There's adequate research already available to help us understand when a window fails. I

to make sure that we're checking the physics and not just relying upon, you know, years of experience. So that's -- it is kind of a combination.

Q. The fire modeling software that you used, what's the name of it?

A. So I used empirical correlations, which are just basic hand calculations that come from experimental data, as well as the computational fluid dynamics model. That's the one that I used, was Fire Dynamics Simulator, or otherwise known as FDS. And that was produced by NIST, the National Institute of Standards and Technology.

Q. Okay. Are there certain assumptions or defaults that are set forth in the software that you use?

A. There aren't any defaults. You -- you have to input all of the data. There are values from material databases that we use to assign to specific known materials. So those are -- those are added, yes.

Q. And the material databases that certain information is pulled from, is that within the software, meaning the software already has that built in, and you just have to apply it?

A. No.

Q. Okay.

question today.

Q. Okay. Well, do you have those with you? Because I know you have your computer with you. Do you have everything that you've prepared in this case?

A. Yes.

Q. Why don't you go ahead and get that out. Because I want to make sure that if there's stuff that you've included in your analysis, that you have access to that readily.

A. Okay.

MR. AYALA: So why don't we take a couple minutes and set up whatever you need to set up.

THE VIDEOGRAPHER: Do you want to go off the record?

MR. AYALA: Yep.

THE VIDEOGRAPHER: Okay. We're off the record. The time is 12:34 p.m.

(OFF THE RECORD)

THE VIDEOGRAPHER: We are back on the record for the deposition of Dr. Gorbett. My name is Madison Haven. Today is October 24, 2024. The time is 12:43 p.m.

BY MR. AYALA:

Q. Think before we took a break, we were discussing to what extent your analysis took into

account the timing for smoke to have entered the room from the outside shed area and caused the smoke alarms to go off. And you wanted to look at some of the studies that you performed. And if you can just kind of walk me through what you're looking at and what's reflected.

A. So we can go into, you know, individual simulations if you'd like, but I -- what I try to do is provide you a computer fire modeling notes into an Excel spreadsheet.

Q. Yep.

A. That kind of summarizes a lot of that, so that's what I'm looking at currently.

Q. Okay. And so based upon that spreadsheet and those -- the modeling results, how much time -- under this hypothesis and theory of the fire originating outside, how much time after the window failure would it have taken for the smoke alarms to go off?

A. It would've been less than ten seconds.

Q. Okay. And how much smoke would have entered within those ten seconds?

A. Yeah. Without -- I can get that answer for you. I don't have that in the summary notes. So that would have required to go in the individual simulations. And there's a couple different ways to do that. You can

visualize it by, you know, looking at the -- the actual animation, or you can pull the actual data from the spreadsheet and do that. But I -- I don't have that readily available. That's not something I looked at.

Q. Okay. Well, what work is it going to take you to look at, spreadsheet or anything else, to determine the amount of smoke that would have been in the room at the time the fire alarms go off?

A. So I can -- I mean, I can pull up a couple of simulations, and we can look at it from a visual standpoint. But to sit down and actually pull the data, tell you the specific amount, that -- that takes a little bit of time. Not something I could do sitting here right now.

Q. Okay.

A. It's -- it's here. It's just you have to pull all the data out.

Q. And again, is that -- to make that determination of the amount of smoke that would have filled that bedroom within any amount of time, whether it's five seconds, ten seconds, or beyond that, that's a computation that's performed by the software based upon some of the research numbers and figures that you've outlined in your report?

A. Yes.

Q. Obviously, there's variations in the results, correct?

A. Yes. So I always try to provide -- since it's a range of input variables, you have to also put a range of what the -- the answers or the conclusions can be. So you'll see everything will have, like, a minimum and a maximum timing, at least what I summarized in the spreadsheet. But that's why I do 50 simulations is, you know, we're accounting for those differences in the variables and then ultimately the differences in the output.

Q. Okay. And is it your testimony that the results of all of those simulations, wherever they might fall, but the results of the totality of those simulations are the conclusion of what occurred with certainty?

A. So I'll -- I'll phrase it the way that makes most sense to me and I think it's answering your question. But the purpose of the simulations are to test the hypotheses, in this case of origin, as it relates to what we know about the fuels there. And what that tells us from these simulations in this scenario is I can tell you the governing physics that apply to both of those hypotheses. And so that's kind of what the totality of all of this will do. It will show us like,

you know, generally, a fire originating in the room will do this. Generally, a fire on the exterior will do this. So kind of the governing equations or governing physics from those.

Q. And because you used the term "generally," obviously that infers that there are exceptions to the generalities, fair?

A. I mean, in this scenario, not really. The -- the interior does the same thing regardless if I change the heat release rate by 20 percent plus or minus, regardless if I change the opening of the window or the failure of the window from 250 degrees to 300 to 350 degrees. That doesn't change. Same thing with the exterior fires. The governing physics there are -- are essentially going to show the exact same thing.

Q. What's the margin of error in use of the modeling -- computer modeling?

A. So you got to get into, like, specifics on the margin of error for something like that. Like what specific variable are you questioning the rate of -- or the -- the error is. So it's -- it's a deeper question than -- you -- you can't just characterize the model has a, you know, plus or minus five percent error. It -- it's not -- it doesn't work that way. You have to look at the very specific physics.

Q. Okay. Well, there -- there's been articles out there that talk about the margin of error with fire modeling softwares, and it describes it as anywhere from 15 to 20 percent. Have you seen that?

A. It depends on what they're talking about. I don't know what article you're -- you're describing, but a 15 to 20 percent error for modeling is not unheard of.

Q. Okay.

A. That's why we do the range, to account for that potential error.

Q. There was actually a case out of New York that discussed fire modeling. And, in fact, it was a case in which an expert's fire modeling analysis was excluded at the time of trial. And in it, they noted that fire modeling carries with it a 15 to 20 percent margin of error assuming all conditions are correct but could be as high as 80 percent depending upon the real conditions. Have you ever heard of that?

A. I'm somewhat familiar with that case.

Q. Okay. Dr. Urbas was -- it was his testimony. He was the expert. And Dr. Urbas acknowledged that there'd be -- there could be a difference between the material represented in a table and the actual material at the fire scene. Do you agree with that?

MR. LAFLAMME: Object to form.

inside. That I am sure of.
BY MR. AYALA:
Q. So when I exclude the term 100 percent certainty, would it be fair to say you are excluding the possibility of this fire originating in bedroom 4?
A. Yes.
Q. Okay. You state here, under the approach section, that you conducted more than 45 simulations, correct?
A. Yes. I -- I actually think the number is 50. I just said over, but yes, it -- it's more like 50.
Q. And I know I saw it somewhere in the report, but was it -- was it 50 or over 50 for each hypothesis?
A. No. It would've been somewhere in, you know, 50 -- 50 on the hypothesis testing.
Q. Okay. Were there any simulations that were consistent with the possibility of the fire originating in bedroom 4?
A. No.
Q. Have you analyzed any of the remnants of the hover board?
A. No. I -- you know, I -- I believe I remember seeing some X-rays that were provided, but -- and photos from a lab exam. But other than that, no. And Mr. King's report.

believe that it is consistent with the principles of physics for the fire to originate out of the shed, window failure or breakage to occur, ignition of the bunk bed between six seconds and 30 seconds, and the room transitioning through flashover within a minute and a half to three minutes with the understanding that before G. ever gets out of bed, L. is up, is out, trying to wake up mom, comes back in.

You think that's all consistent?

A. I believe the governing physics are much more consistent with that series of events than a fire originating in the room.

Q. Okay. You would agree with me that given the events as laid out by L. of getting up, going out to check on mom, knowing that there was a fire already, knowing that the wall -- the window had failed, by the time he comes back in and G. is still in bed, you'd agree with me that that bunk bed would have been on fire?

A. So we -- we talked about this earlier, right? My model is -- just has the bunk bed, right, igniting or not igniting. I didn't have bedding and then eventually the bid -- bedding spreading to the bed and igniting that. So I -- I do believe the ignition of the bedding material is relatively quick. Whether or not it

actually gets into and starts the entire bunk bed on fire, that's -- there's some time element to that. But I think it's much more consistent that we have some time for all of those activities that you're describing to happen with an exterior fire and not with an interior fire.

Q. Within six to 30 seconds, whether it's the bed material, the bunk bed material, the mattress, you would expect that the child on that top bunk, G., would have realized that it was on fire?

A. Yeah. And I -- I believe that's -- you know, he gets injured on his back because of the heat coming through the window. So I believe his injuries are also consistent with that happening.

Q. But you do not believe that -- well, let me ask you. Do you -- do you believe that by the time G. gets up and starts his -- to make his way out of his bed and out of the room, that his sheets and his mattress were on fire?

A. I believe part of it was, yes. And when we see K. -- or when she walks down the hallway, she also describes that. She says the -- the bedding and that back wall are ignited and burning. So that's consistent.

Q. Don't you think that's a memory that he would

have and be able to recount without prompting that his actual bed was on fire?

A. Well, again, I -- when I'm talking about bedding, it's going to be the side closest to the window. It's not going to be the top of the -- the mattress that's burning right away. So it's his perspective, what can he see versus what he can't see when he's laying on the bed.

Q. Well, how do you know that? How do you know it wouldn't have spread to his sheet that's on top of him?

A. Because he says it wasn't up there.

Q. Okay. So if the entire bunk bed is ignited -- at least according to your report, "Bunk bed ignites relatively quickly. You say, that's within six to 36 seconds. The room transitions to flashover between a minute and a half and three minutes."

And given the testimony that you've accepted, that L. gets up, goes out to check on mom, comes back, G. is still in bed, you don't think by that point the bed, the mattress around G. is on fire?

A. Again, I -- I believe the bedding that's closest to the window side has probably already ignited. He may not see it because of his perspective. But that -- those physics are much closer to the governing

physics of this fire than a fire originating in the bedroom, because the tenable conditions inside that bedroom would not have exist very long. And neither of those boys would have been able to say -- safely egress through that doorway.

Q. But that theory as laid out does not defy physics?

A. No. Actually, that is what the physics is showing. I'm not -- I'm not sitting here guessing off of years of experience. That's why I did 50 simulations to test these hypotheses.

Q. Uh-huh. It's important to know how long that window had broken or failed before L. gets out of bed, correct?

A. I don't think so. You know, would it -- would it have been nice to know? Yes. But we're never going to have that kind of clock on those events. So that's why we do the simulations. That's why we run ranges. That's why we bound the answers based on what the physics is showing.

Q. Under the theory that the fire began at the shed, if that window had failed a minute before L. gets out of bed to check on his mom, that only gives him 30 seconds to get back into the room and wake up G. based upon the minimum assimilation numbers of transitioning

through flashover, right?

A. Yes. Based on the simulation, yes, and the physics.

Q. Okay. If that window had failed two minutes before L. gets out of bed and goes to check on his mother, under this theory of the shed being the origin of the fire, more likely than not, G. is in that room when it transitions to -- when it transitions through the flashover?

A. You're correct. These -- these kids would not have survived. Right. The tenable conditions would've been reached in that space, and they would have been injured significantly, if not dead from this fire.

Q. Do you know if L. closed the door behind him when he went to check on his mom?

A. I don't remember that in the testimony.

Q. Does it matter one way or another for your analysis?

A. It's -- I mean, it's not consistent with the position of a door after the fire. So somehow if it closed, it had to been reopened. And that -- that could have influenced the development inside that compartment, but that's also not consistent with, you know, K.

walking by an open door. It's not consistent with the smoke and heat and gases that get out into the

would have had on tripped circuits in the home?

A. No.

MR. AYALA: Okay. I think those are all my questions. Thanks for your time.

THE WITNESS: Yeah. Thank you.

CROSS EXAMINATION

BY MR. LAFLAMME:

Q. Mr. Gorbett, I have a couple quick follow-ups. Apologies. I'll probably bounce around here a little bit. What is the name of the computer model simulation that -- program that you used for your simulations in this case?

A. Fire Dynamics Simulator, or FDS.

Q. Okay. And what is FDS as far as -- I -- strike that.

Is FDS a generally accepted computer model in the fire science industry?

A. Yeah, absolutely. Internationally, it's the most widely used.

Q. And who uses it?

A. Researchers, academics, forensic specialists, design engineers. Those are usually the -- the big, you know, categories that use it.

Q. How long has the software been around?

A. So I think the first version was 2000.

Q. And I assume since 2000, the computer modeling industry has continued to develop?

A. Yeah. So I think we're on Version 6 or almost close to 7 of the -- of the software. And they have -- you know, it's like 6.9. So they always have additions that are coming out regularly. It's updated on a regular basis when there's new research that helps better understand the physics.

Q. Based on your education and experience in the fire science field, is the computer model software that you used, I think you alluded it's the most accepted and -- or most used in the industry, is -- correct?

A. Yes.

Q. Okay. You've indicated that -- early on in your testimony you've done some work for both Plaintiff and the defendants. Have you ever worked for Morgan & Morgan?

A. Yes.

Q. On how many occasions, if you can recall?

A. About a -- maybe 10. Around 10.

Q. With respect to the computer modeling that you did, we talked about tenability. Could you describe what tenability means?

A. So tenability is dealing with the conditions within the compartment or, you know, just the conditions

Q. Okay. And based on your work in this case and the computer models that you did, were there any computer models that would have allowed for a -- the area of origin to be within bedroom four?

A. No.

Q. So in all of the computer models and simulations that you ran, it was -- they were all consistent with only a fire starting outside at the smoker shed?

A. That's correct. That's -- that's why I testified about the governing physics. The governing physics for an interior fire does not fit. The governing physics for an exterior fire fits pretty much everything we see and hear from the -- the testimony.

MR. LAFLAMME: All right. Thank you. That's all the questions I have.

THE VIDEOGRAPHER: All right.

THE WITNESS: Oh.

THE VIDEOGRAPHER: This concludes the video deposition of Dr. Gorbett. The time is 3:09 p.m.

THE REPORTER: Okay. We're still on the written record. Mr. Ayala, how would you like your copy of the transcript?

MR. AYALA: I'll answer that in a minute, but let me, before I do, if you have an objection, I